

# HOUSE BILL No. 1558

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 13-11-2; IC 13-18-10.

**Synopsis:** Regulation of confined feeding operations. Establishes good character disclosure requirements and financial assurance requirements for confined feeding operations and concentrated animal feeding operations (operations). Allows the department of environmental management (IDEM) to review and act on disclosed good character information. Provides that: (1) IDEM approval of operations applies to both original construction and modifications; and (2) the requirement for notice to owners or occupants of neighboring land applies to all operations. Prohibits construction of an operation less than one mile from the boundary of a parcel of land on which a school or health facility is located, the boundary of a municipality, or waters.

**Effective:** January 1, 2010.

## Blanton

January 16, 2009, read first time and referred to Committee on Agriculture and Rural Development.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

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## HOUSE BILL No. 1558

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A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 13-11-2-8, AS AMENDED BY P.L.154-2005,  
2       SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       JANUARY 1, 2010]: Sec. 8. (a) **"Applicant", for purposes of**  
4       **IC 13-18-10, refers to a person (as defined in section 158(b) of this**  
5       **chapter) that submits an application to the department under**  
6       **IC 13-18-10-2.**

7       (α) (b) "Applicant", for purposes of IC 13-19-4, means an  
8       individual, a corporation, a limited liability company, a partnership, or  
9       a business association that:

10       (1) receives, for commercial purposes, solid or hazardous waste  
11       generated offsite for storage, treatment, processing, or disposal;  
12       and

13       (2) applies for the issuance, transfer, or major modification of a  
14       permit described in IC 13-15-1-3 other than a postclosure permit  
15       or an emergency permit.

16       For purposes of this subsection, an application for the issuance of a  
17       permit does not include an application for renewal of a permit.

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IN 1558—LS 6312/DI 52+



(~~b~~) (c) "Applicant", for purposes of IC 13-20-2, means an individual, a corporation, a limited liability company, a partnership, or a business association that applies for an original permit for the construction or operation of a landfill.

(~~c~~) (d) For purposes of subsection (~~a~~), (b), "applicant" does not include an individual, a corporation, a limited liability company, a partnership, or a business association that:

- (1) generates solid or hazardous waste; and
- (2) stores, treats, processes, or disposes of the solid or hazardous waste at a site that is:

- (A) owned by the individual, corporation, partnership, or business association; and

- (B) limited to the storage, treatment, processing, or disposal of solid or hazardous waste generated by that individual, corporation, limited liability company, partnership, or business association.

SECTION 2. IC 13-11-2-71, AS AMENDED BY P.L.137-2007, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 71. "Environmental management laws" refers to the following:

- (1) IC 13-12-2 and IC 13-12-3.
- (2) IC 13-13.
- (3) IC 13-14.
- (4) IC 13-15.
- (5) IC 13-16.
- (6) IC 13-17-3-15, IC 13-17-8-10, IC 13-17-10, and IC 13-17-11.
- (7) **IC 13-18-10**, IC 13-18-12, IC 13-18-13-31, and IC 13-18-15 through IC 13-18-20.
- (8) IC 13-19-1, IC 13-19-4, and IC 13-19-5-17.
- (9) IC 13-20-1, IC 13-20-2, IC 13-20-4 through IC 13-20-15, IC 13-20-17.7, IC 13-20-19 through IC 13-20-21, and IC 13-20-22-21.
- (10) IC 13-22.
- (11) IC 13-23.
- (12) IC 13-24.
- (13) IC 13-25-1 through IC 13-25-5.
- (14) IC 13-27-8.
- (15) IC 13-30, except IC 13-30-1.

SECTION 3. IC 13-11-2-129.9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 129.9. "Modification", for purposes of IC 13-18-10, refers to an expansion of a confined**

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feeding operation or concentrated animal feeding operation that results in either of the following:

- (1) An increase in the confined animal capacity.
- (2) An increase in the liquid manure storage capacity.

SECTION 4. IC 13-11-2-191 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 191. (a) "Responsible party", for purposes of IC 13-18-10, means any of the following:

- (1) An applicant referred to in IC 13-18-10-1.5(a)(1).
- (2) A person referred to in IC 13-18-10-1.5(a)(2) or IC 13-18-10-1.5(a)(3).
- (3) An officer, a corporation director, or a senior management official of any of the following that is an applicant referred to in IC 13-18-10-1.5(a)(1) or a person referred to in IC 13-18-10-1.5(a)(2) or IC 13-18-10-1.5(a)(3):

- (A) A corporation.
- (B) A partnership.
- (C) A limited liability company.
- (D) A business association.

~~(a)~~ (b) "Responsible party", for purposes of IC 13-19-4, means:

- (1) an officer, a corporation director, or a senior management official of a corporation, partnership, limited liability company, or business association that is an applicant; or
- (2) an individual, a corporation, a limited liability company, a partnership, or a business association that owns, directly or indirectly, at least a twenty percent (20%) interest in the applicant.

~~(b)~~ (c) "Responsible party", for purposes of IC 13-20-6, means:

- (1) an officer, a corporation director, or a senior management official of a corporation, partnership, limited liability company, or business association that is an operator; or
- (2) an individual, a corporation, a limited liability company, a partnership, or a business association that owns, directly or indirectly, at least a twenty percent (20%) interest in the operator.

~~(c)~~ (d) "Responsible party", for purposes of IC 13-24-2, has the meaning set forth in Section 1001 of the federal Oil Pollution Act of 1990 (33 U.S.C. 2701).

~~(d)~~ (e) "Responsible party", for purposes of IC 13-25-6, means a person:

- (1) who:
  - (A) owns hazardous material that is involved in a hazardous materials emergency; or

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(B) owns a container or owns or operates a vehicle that contains hazardous material that is involved in a hazardous materials emergency; and

(2) who:

(A) causes; or

(B) substantially contributes to the cause of; the hazardous materials emergency.

SECTION 5. IC 13-11-2-265 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 265. (a) "Waters", for purposes of **IC 13-18-10-1.7**, water pollution control laws, and environmental management laws, means:

(1) the accumulations of water, surface and underground, natural and artificial, public and private; or

(2) a part of the accumulations of water;

that are wholly or partially within, flow through, or border upon Indiana.

(b) The term "waters" does not include:

(1) an exempt isolated wetland;

(2) a private pond; or

(3) an off-stream pond, reservoir, wetland, or other facility built for reduction or control of pollution or cooling of water before discharge.

(c) The term includes all waters of the United States, as defined in Section 502(7) of the federal Clean Water Act (33 U.S.C. 1362(7)), that are located in Indiana.

SECTION 6. IC 13-18-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 1. (a) **Except as provided in subsection (b)**, a person may not start construction or **modification** of a ~~confined feeding operation~~ **either of the following** without obtaining the prior approval of the department:

**(1) A confined feeding operation.**

**(2) A CAFO.**

(b) **Subject to section 1.5 of this chapter**, obtaining an NPDES permit for a CAFO meets the requirements of subsection ~~(a)~~ **(2)** and 327 IAC 16 to obtain an approval.

SECTION 7. IC 13-18-10-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 1.5. (a) This section applies to the following:**

**(1) An applicant for approval under section 1(a) of this chapter whose application:**

**(A) is:**

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- 1 (i) filed with the department; and
- 2 (ii) not approved by the department;
- 3 before 2010; or
- 4 (B) is filed with the department after 2009.
- 5 (2) A person who applies for approval under 327 IAC 5 of an
- 6 individual NPDES permit for a CAFO whose application:
- 7 (A) is:
  - 8 (i) filed with the department; and
  - 9 (ii) not approved by the department;
  - 10 before 2010; or
  - 11 (B) is filed with the department after 2009.
- 12 (3) A person who files a notice of intent under 327 IAC 15 for
- 13 general NPDES permit coverage for a CAFO whose notice is
- 14 filed after 2009.
- 15 (b) An applicant referred to in subsection (a)(1) or (a)(2) must
- 16 include the following in the application:
  - 17 (1) The disclosure statement or statements referred to in
  - 18 subsection (d).
  - 19 (2) Proof of financial assurance referred to in subsection (g).
- 20 (c) A person referred to in subsection (a)(3) must include the
- 21 disclosure statement or statements referred to in subsection (d) and
- 22 proof of financial assurance referred to in subsection (g) in the
- 23 notice of intent filed under 327 IAC 15 for general NPDES permit
- 24 coverage for the CAFO.
- 25 (d) An applicant or person referred to in subsection (b) or (c)
- 26 must submit to the department a disclosure statement for each
- 27 responsible party that includes the following:
  - 28 (1) The name and business address of the responsible party.
  - 29 (2) A description of the responsible party's experience in
  - 30 managing the type of facility that will be managed under the
  - 31 permit.
  - 32 (3) A description of all pending administrative, civil, or
  - 33 criminal enforcement actions filed against the responsible
  - 34 party that alleges either of the following:
    - 35 (A) Acts or omissions that:
      - 36 (i) constitute a material violation of a state or federal
      - 37 environmental law or regulation; and
      - 38 (ii) present a substantial endangerment to human health
      - 39 or the environment.
    - 40 (B) Knowing repeated violations of state or federal
    - 41 environmental laws or regulations that could lead to
    - 42 environmental harm.

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(4) A description of all finally adjudicated or settled administrative, civil, or criminal enforcement actions resolved against the responsible party within the five (5) years that immediately precede the date of the application involving either of the following:

(A) Acts or omissions that:

- (i) constitute a material violation of a state or federal environmental law or regulation; and
- (ii) present a substantial endangerment to human health or the environment.

(B) Knowing repeated violations of state or federal environmental laws or regulations that could lead to environmental harm.

(5) Identification of all state and federal environmental permits previously denied or revoked.

(e) A disclosure statement submitted under subsection (d):

- (1) must be executed under oath or affirmation; and
- (2) is subject to the penalty for perjury under IC 35-44-2-1.

(f) The department may investigate and verify the information set forth in a disclosure statement submitted under subsection (d).

(g) A person referred to in subsection (b) or (c) must submit to the department evidence of financial assurance, maintained in accordance with and in amounts established by rules adopted under section 4 of this chapter. The financial assurance must be in the form of:

- (1) a bond for performance, executed by a corporate surety licensed to do business in Indiana;
- (2) a negotiable certificate of deposit; or
- (3) a negotiable letter of credit;

payable to the department and conditional upon faithful performance of the requirements of this chapter and compliance with other environmental laws.

SECTION 8. IC 13-18-10-1.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 1.7. (a) Except as provided in subsection (b), a new confined feeding operation, including a CAFO, may not be constructed if any part of a structure that is part of the operation or of a manure treatment facility that is part of the operation would be less than one (1) mile from any of the following:

- (1) The boundary of a parcel of land on which any of the following is located:

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- 1 (A) A school, other than a home school.
- 2 (B) A health facility licensed under IC 16-28.
- 3 (2) The boundary of a municipality.
- 4 (3) Waters.
- 5 (b) Subsection (a) does not apply to construction that:
  - 6 (1) is an expansion of an existing confined feeding operation
  - 7 or CAFO; and
  - 8 (2) is proposed by a person that has not committed a violation
  - 9 of:
    - 10 (A) environmental management laws; or
    - 11 (B) a rule adopted by the board;
    - 12 as determined by the department.
- 13 SECTION 9. IC 13-18-10-2 IS AMENDED TO READ AS
- 14 FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 2. (a) Application
- 15 for approval of the construction **or modification** of a confined feeding
- 16 operation **or a CAFO** must be made on a form provided by the
- 17 department. An applicant must submit the completed application form
- 18 to the department together with the following:
  - 19 (1) Plans and specifications for the design and operation of
  - 20 manure treatment and control facilities.
  - 21 (2) A manure management plan that outlines procedures for the
  - 22 following:
    - 23 (A) Soil testing.
    - 24 (B) Manure testing.
    - 25 (3) Maps of manure application areas.
    - 26 (4) Supplemental information that the department requires,
    - 27 including the following:
      - 28 (A) General features of topography.
      - 29 (B) Soil types.
      - 30 (C) Drainage course.
      - 31 (D) Identification of nearest streams, ditches, and lakes.
      - 32 (E) Location of field tiles.
      - 33 (F) Location of land application areas.
      - 34 (G) Location of manure treatment facilities.
      - 35 (H) Farmstead plan, including the location of water wells on
      - 36 the site.
    - 37 (5) A fee of one hundred dollars (\$100). The department shall
    - 38 refund the fee if the department does not make a determination in
    - 39 accordance with the time period established under section 2.1 of
    - 40 this chapter.
    - 41 (6) **The disclosure statement or statements and the proof of**
    - 42 **financial assurance required under section 1.5 of this chapter.**

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(b) An applicant who applies for approval to construct a confined feeding operation **or a CAFO** on land that is undeveloped or for which a valid existing approval has not been issued, **or to modify a confined feeding operation or a CAFO**, shall make a reasonable effort to provide notice:

(1) to:

(A) each person who owns land that adjoins the land on which the confined feeding operation **or the CAFO** is to be located **or modified**; or

(B) if a person who owns land that adjoins the land on which the confined feeding operation **or the CAFO** is to be located **or modified** does not occupy the land, all occupants of the land; and

(2) to the county executive of the county in which the confined feeding operation **or the CAFO** is to be located **or modified**; not more than ten (10) working days after submitting an application. The notice must be sent by mail, be in writing, include the date on which the application was submitted to the department, and include a brief description of the subject of the application. The applicant shall pay the cost of complying with this subsection. The applicant shall submit an affidavit to the department that certifies that the applicant has complied with this subsection.

**(c) A person must comply with subsection (d) if:**

**(1) as provided in section 1(b) of this chapter, the person is not required to file an application for construction of a CAFO:**

**(A) on land that is undeveloped; or**

**(B) for which:**

**(i) a valid existing approval has not been issued; or**

**(ii) an NPDES permit has not been obtained;**

**or for modification of a CAFO; and**

**(2) the person files:**

**(A) an application under 327 IAC 5 for an individual NPDES permit for the construction or modification of a CAFO; or**

**(B) a notice of intent under 327 IAC 15 for general NPDES permit coverage for construction or modification of a CAFO.**

**(d) A person referred to in subsection (c) shall make a reasonable effort to provide notice:**

**(1) to:**

**(A) each person who owns land that adjoins the land on which the CAFO is to be located or modified; or**

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(B) if a person who owns land that adjoins the land on which the CAFO is to be located or modified does not occupy the land, all occupants of the land; and

(2) to the county executive of the county in which the CAFO is to be located or modified;

not more than ten (10) working days after submitting an application or filing a notice of intent. The notice must be sent by mail, be in writing, include the date on which the application or notice of intent was submitted to or filed with the department, and include a brief description of the subject of the application or notice of intent. The person shall pay the cost of complying with this subsection. The person shall submit an affidavit to the department that certifies that the person has complied with this subsection.

~~(e)~~ (e) Plans and specifications for manure treatment or control facilities for a confined feeding operation or a CAFO must secure the approval of the department. The department shall approve the construction and operation of the manure management system of the confined feeding operation or the CAFO if the commissioner determines that the applicant meets the requirements of:

- (1) this chapter;
- (2) rules adopted under this chapter;
- (3) the water pollution control laws;
- (4) rules adopted under the water pollution control laws; and
- (5) policies and statements adopted under IC 13-14-1-11.5 relative to confined feeding operations or CAFOs.

SECTION 10. IC 13-18-10-2.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 2.1. (a) The department:

(1) shall make a determination on an application not later than ninety (90) days after the date the department receives the completed application, including all required supplemental information, unless the department and the applicant agree to a longer time; and

(2) may conduct any inquiry or investigation, consistent with the department's duties under this chapter, the department considers necessary before making a determination.

(b) If the department fails to make a determination on an application not later than ninety (90) days after the date the department receives the completed application, the applicant may request and receive a refund of an approval application fee paid by the applicant, and the commissioner shall:

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- (1) continue to review the application;
- (2) approve or deny the application as soon as practicable; and
- (3) refund the applicant's application fee not later than twenty-five (25) working days after the receipt of the applicant's request.

(c) The commissioner may suspend the processing of an application and the ninety (90) day period described under this section if **either of the following applies:**

(1) The department:

- (A) determines within thirty (30) days after the department receives the application that the application is incomplete; and
- (B) has mailed a notice of deficiency to the applicant that specifies the parts of the application that:

- ~~(1)~~ (i) do not contain adequate information for the department to process the application; or
- ~~(2)~~ (ii) are not consistent with applicable law.

(2) The department:

- (A) **determines that the applicant is subject to any pending action as described in section 1.5(d)(3) of this chapter; and**
- (B) **is diligently pursuing the pending action under IC 13-30.**

(d) The department may establish requirements in an approval regarding that part of the confined feeding operation **or the CAFO** that concerns manure handling and application to assure compliance with:

- (1) this chapter;
- (2) rules adopted under this chapter;
- (3) the water pollution control laws;
- (4) rules adopted under the water pollution control laws; and
- (5) policies and statements adopted under IC 13-14-1-11.5 relative to confined feeding operations **or CAFOs.**

(e) **Subject to subsection (f), the commissioner may deny an application upon making either of the following findings:**

(1) **A responsible party intentionally misrepresented or concealed any material fact in:**

- (A) a disclosure statement; or
- (B) other information;

**required by section 1.5 of this chapter.**

(2) **An enforcement action was resolved against a responsible party as described in section 1.5(d)(4) of this chapter.**

(f) **The commissioner may not deny an application under this section based solely on pending actions disclosed under section 1.5(d)(3) of this chapter.**

(g) **Before making a determination to approve or deny an**

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1 application, the commissioner must consider the following factors:

2 (1) The nature and details of the acts attributed to the  
3 applicant or responsible party.

4 (2) The degree of culpability of the responsible party.

5 (3) The responsible party's cooperation with the state or  
6 federal agencies involved in the investigation of the activities  
7 involved in actions referred to in section 1.5(d)(4) of this  
8 chapter.

9 (4) The responsible party's dissociation from any other  
10 persons or entities convicted in a criminal enforcement action  
11 referred to in section 1.5(d)(4) of this chapter.

12 (5) Prior or subsequent self-policing or internal education  
13 programs established by the responsible party to prevent acts,  
14 omissions, or violations referred to in section 1.5(d)(4) of this  
15 chapter.

16 (6) Whether the best interests of the public will be served by  
17 denial of the permit.

18 (7) Any demonstration of good citizenship by the person or  
19 responsible party.

20 (h) Except as provided in subsection (i), in taking action under  
21 subsection (e), the commissioner must make separately stated  
22 findings of fact to support the action taken. The findings of fact  
23 must:

24 (1) include a statement of ultimate fact; and

25 (2) be accompanied by a concise statement of the underlying  
26 basic facts of record to support the findings.

27 (i) If the commissioner denies an application under subsection  
28 (e), the commissioner is not required to explain the extent to which  
29 any of the factors set forth in subsection (g) influenced the denial.

30 ~~(e)~~ (j) The department may amend an approval of an application or  
31 revoke an approval of an application:

32 (1) for failure to comply with:

33 (A) this chapter;

34 (B) rules adopted under this chapter;

35 (C) the water pollution control laws; or

36 (D) rules adopted under the water pollution control laws; and

37 (2) as needed to prevent discharges of manure into the  
38 environment that pollute or threaten to pollute the waters of the  
39 state.

40 SECTION 11. IC 13-18-10-2.2 IS AMENDED TO READ AS  
41 FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 2.2. (a) If an  
42 applicant receives an approval under this chapter and completes

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1 construction, not more than thirty (30) days after the date the applicant  
 2 completes the construction the applicant shall execute and send to the  
 3 department an affidavit that affirms under penalties of perjury that the  
 4 confined feeding operation **or CAFO**:

5 (1) was constructed; and

6 (2) will be operated;

7 in accordance with the requirements of the department's approval.

8 (b) Construction of an approved confined feeding operation **or**  
 9 **CAFO** must:

10 (1) begin not later than two (2) years; and

11 (2) be completed not later than four (4) years;

12 after the date the department approves the construction of the confined  
 13 feeding operation **or CAFO** or the date all appeals brought under  
 14 IC 4-21.5 concerning the construction of the confined feeding  
 15 operation **or CAFO** have been completed, whichever is later.

16 SECTION 12. IC 13-18-10-2.6 IS AMENDED TO READ AS  
 17 FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 2.6. The  
 18 department shall establish a compliance and technical assistance  
 19 program for owners and operators of confined feeding operations **and**  
 20 **CAFOs** that may be administered by:

21 (1) the department;

22 (2) a state college or university; or

23 (3) a contractor.

24 SECTION 13. IC 13-18-10-4, AS AMENDED BY P.L.2-2007,  
 25 SECTION 167, IS AMENDED TO READ AS FOLLOWS  
 26 [EFFECTIVE JANUARY 1, 2010]: Sec. 4. (a) **Subject to subsection**  
 27 **(c)**, the board may adopt rules under IC 4-22-2 and IC 13-14-9 and the  
 28 department may adopt policies or statements under IC 13-14-1-11.5  
 29 that are necessary for the proper administration of this chapter. The  
 30 rules, policies, or statements may concern construction and operation  
 31 of confined feeding operations **and CAFOs** and may include uniform  
 32 standards for:

33 (1) construction and manure containment that are appropriate for  
 34 a specific site; and

35 (2) manure application and handling that are consistent with best  
 36 management practices:

37 (A) designed to reduce the potential for manure to be  
 38 conveyed off a site by runoff or soil erosion; and

39 (B) that are appropriate for a specific site.

40 (b) Standards adopted in a rule, policy, or statement under  
 41 subsection (a) must:

42 (1) consider confined feeding standards that are consistent with

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standards found in publications from:

(A) the United States Department of Agriculture;

(B) the Natural Resources Conservation Service of the United States Department of Agriculture;

(C) the Midwest Plan Service; and

(D) postsecondary educational institution extension bulletins; and

(2) be developed through technical review by the department, postsecondary educational institution specialists, and other animal industry specialists.

**(c) The board shall:**

**(1) adopt rules under IC 4-22-2 and IC 13-14-9 to set the amount of financial assurance required of a person under section 1.5(g) of this chapter; and**

**(2) set graduated amounts under subdivision (1) for categories of operations determined by the board based on the animal capacity of the operations taking into consideration the greater potential liability associated with larger operations.**

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